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NOTES

THE ILLINOIS TEN-HOUR LAW

[*Ritchie* v. *The People*, 11]

On April 21, 1910, the Supreme Court of Illinois sustained, as a justifiable exercise of the police power, a law enacted by the Forty-sixth General Assembly and approved June 15, 1909, intended to "regulate and limit the hours of employment of females in any mechanical establishment, or factory or laundry in order to safeguard the health of such employees; to provide for its enforcement and a penalty for its violation." The text of the act, which was in terms identical with an act previously adopted by the state of Oregon, was as follows:

SECTION I. Be it enacted by the People of the State of Illinois represented in the General Assembly: That no female shall be employed in any mechanical establishment or factory, or laundry in this State, more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any day.

SEC. II. Any employer who shall require any female to work in any of the places mentioned in Section I of this Act, more than the number of hours provided for in this Act, during any day of twenty-four hours, or who shall fail, neglect or refuse so to arrange the work of females in his employ that they shall not work more than the number of hours provided for in this Act, during any one day, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this Act, shall be guilty of misdemeanor and upon conviction thereof shall be fined for each offense in a sum of not less than $25.00 or more than $100.00.

SEC III. The State Department of Factory Inspection shall be charged with the duty of enforcing the provisions of this Act and prosecuting all violations thereof.

SEC. IV. All Acts and parts of Acts in conflict herewith are hereby repealed.

The Oregon law had been copied by the Illinois legislature because that law had been upheld by the highest tribunal in that

state, and by the Supreme Court of the United States,[1] and it was believed that in the light of the latter decision the Illinois court would find itself able to sustain similar legislature. This belief was cherished in spite of the fact that in 1895 the court had felt compelled to hold invalid[2] an act of 1893 limiting the work of women in factories and workshops to eight hours a day, because while that decision was accompanied with an opinion containing language wide enough to seem to condemn all legislative interference with the wage bargain, the substance was to the effect that the case for a legislative eight-hour day had not been made out to the satisfaction of the court.[3] The belief was also cherished in the face of decisions apparently prohibiting such classification as would separate men from women, or the women workers in factories, workshops, and laundries from those in hotels and restaurants and those performing domestic and agricultural labor.[4]

These hopes have been justified by the decision in the second case of *Ritchie* v. *The People*.[5] In this holding the court finds, first, that under the Illinois constitution, the right to contract with reference to labor, which is a property right enjoyed by women as by men, is still, like all property rights, subject to such legislative restrictions as are required by the public well-being; that the evidence of the effect of long days of work in the kinds of establishment enumerated upon the health of women and upon the performance of their maternal duties is convincing enough to enable the court to hold this limitation within the exercise of that undefined but not unlimited power known as the police power. It finds, in the second place, that the peculiar structure of women and the performance of their maternal duties place them at such a disadvantage in the industrial struggle as to justify a distinction between men and women workers. Thirdly, the court finds that the difference between labor in connection with machinery and that performed in places where machinery is not used is a justification for the separation of women into two groups, and for the regulation of the working day for the members of one group while the members of the other

[1] *Curt Miller* v. *Oregon*, 208 U.S. 412.

[2] *Ritchie* v. *The People*, 155 Ill. 98.

[3] Freund, *Police Power*, sec. 313.

[4] *Frorer* v. *The People*, 141 Ill. 171; *Braceville Coal Co.* v. *The People*, 147 Ill. 66.

[5] *W. C. Ritchie & Co., a corporation, et al., appellants,* v. *John E. W. Wayman, et al., appellees, Chicago Legal News,* XLII, 301, April 30, 1910.

are allowed the privilege of being employed as many hours out of the twenty-four as the conditions of their trade and their economic weakness dictate.

Legislation providing for a ten-hour day is urged largely upon hygienic considerations and the two cases in which the validity of such legislation has been sustained have been the occasion of very remarkable and novel arguments,[6] in which considerations of social well-being have supplemented legal authority in a manner and to a degree probably quite unprecedented. But it is to be noted that the real basis of the decision is the connection now established to the satisfaction of the court, first, between the health of women workers and the public health,[7] and second, between the public health and public well-being. When evidence as convincing is accumulated with reference to the bearing of any other industrial abuse upon the public welfare, legislative control may under this decision intervene.

The decision is, then, of greater importance than is indicated by the question under consideration, because it removes a doubt which paralyzed all activity in the direction of legislative control of industry for the improvement of working conditions beyond the obvious necessity of providing for bodily safety and reasonable decency. On the basis of this decision it may be anticipated that such control will be pushed from point to point as new evidence of its need is secured. Judging from the experience of other communities industrially more advanced, this limitation upon the length of the working day will be followed at no remote day by a prohibition of night work for women and by careful discrimination among the trades, so that the work both of men and of women may be limited in those in which the long day means special peril to the health.

Questions at once suggest themselves. First, What is the probable effect of such legislature on the industrial fate of those ostensibly protected? That is, what, judging by the experience of other communities in which similar legislation has been enacted, will be the consequence so far as the opportunity for employment of women workers is concerned, and what will be the effect upon their wages? If one may believe the testimony as to English legislation,

[6] Brief of Louis D. Brandeis in *Curt Miller* v. *State of Oregon;* also, brief prepared by Louis D. Brandeis and Josephine Goldmark, submitted in the Illinois case.

[7] In this connection the case of *Re Jacobs,* 98 N.Y. 98, is interesting.

its effect has been neither to restrict the field of employment[8] so as to lead to the substitution of men for women workers, nor to lower the wages of the women in a regulated trade.[9]

The second question relates to the effect of such legislation upon the working day of men. Here again the result seems to have been that the legal shortening of the day for women has carried with it a voluntary shortening of the day for the men in the same trades, so that such legislation affecting women workers is often supported by men, not that they may take away the work of the women, but that both may be advantaged by it.[10]

A third question relates to the effect of such regulations upon the regulated trades. This is, of course, most difficult to foresee, particularly where the legislation is secured in only one state out of a number in which that trade is carried on. Every such advance in any state renders it more desirable from the competitive standpoint that the other states should not lag behind. And it is, of course, obvious that interference with industry should go no farther than is justified by urgent demands of public welfare. To what extent and in what direction such control should be exercised is, then, a question of great difficulty and delicacy to be determined on the basis of exact knowledge as to industrial conditions and careful discrimination as to industrial requirements.[11]

This legislation is of peculiar interest to three groups of persons. First, it appeals to those employers of female labor who would be glad to maintain reasonable hours of work as they would be glad to maintain a human and decent policy in all their treatment of their employees, but are constantly driven by competitive pressure to an inhuman and inconsiderate method of dealing. Second, it will be welcomed by those who are concerned with such regulation of industry as makes possible the conservation of the human resources of the community. The possibility of

[8] With the possible slight exception of employment by night in the printing trade. See MacDonald, *Women in the Printing Trades*, chap. VI; Webb, *Problems of Modern Industry*, chaps iv, v.

[9] See, for example, Wood, "The Course of Women's Wages during the Nineteenth Century," Appendix A to Hutchins and Harrison's *History of Factory Legislation*.

[10] See Hutchins and Harrison, *op. cit.*, chap. ix.

[11] On this point see particularly an article on "Constitutional Aspects of the Ten-Hour Law" by Professor Ernst Freund, reprinted in the *Bulletin Issued by the Bureau of Labor Statistics*, 1909.

protecting the child worker and of preventing the exploitation of the young persons of the community has been long recognized and has been embodied in protective legislation. Because of the decision in the former Ritchie case, the possibility of protecting women workers in Illinois seemed remote. And in Illinois the girl becomes a woman for all contractual purposes at eighteen. Yet it is quite evident that industrial women between eighteen and twenty-one need protection because of their youth, and that all women workers are at a considerable disadvantage as compared with men workers, and as compared with the employer with whom they bargain, because of the small number of employments open to them, because of the lack of opportunity for industrial training, and because of the general expectation that their employment will last only until the time of their marriage. To those who are constantly confronted with first-hand evidences as to the wastage resulting from unregulated bargaining, the decision gives promise of an ever-widening control over industry for the purpose of reducing the exploitation of the economically weak by the economically strong and of the gradual adoption in industry of a code not less brutal nor less informed with ideas of justice and fair play than that prevailing on the football field or in the prize ring.

And third, this decision has great interest for those consciously concerned with the gradual elevation of women. The inevitable effect of such legislation is the selection from the wage-earning group of the industrially fit and capable, and the gradual separation of the employable from the unemployable. For as the humane and capable employer is handicapped by the unscrupulous and incapable one who can survive only by the recourse to methods of exploitation, so the industrially capable wage-earning woman is heavily weighted by the less capable worker. By this process of selection a working group will in time be constituted, quite able to formulate standards of efficiency and to dictate conditions of employment. The handicapped and unemployable become thereby subjects for the special social agency or the relief society.

It should be noted, in closing, that in the second Ritchie case the Supreme Court has not overruled its decision in the first. In the first place the later case had to do with a ten-hour day, the earlier with an eight-hour day; in the second place, fifteen years intervened between the earlier and the later decisions, during which years a

number of states enacted similar legislation and thus indicated a widespread belief in the necessity of regulation.[12]

Besides this there had been a great mass of evidence accumulated upon the subject of the importance of regulation from the point of view of the public health and so of the public well-being. A court which doubted in 1895 and so rejected, in 1910 was convinced and so sustained the legislative power.

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WASHINGTON NOTES

HIGHER RAILROAD RATES
THE NEW BUREAU OF MINES
UNSATISFACTORY BANKING CONDITIONS
THE CORPORATION TAX YIELD
A NEW TARIFF INVESTIGATION
WORK OF THE MONETARY COMMISSION

The first result of the expected railroad legislation, upon which Congress is now engaged under the influence of President Taft, has just been witnessed in the form of a large and widely diffused addition to railroad freight rates with some incidental additions to passenger fares here and there. The higher rates represent a very serious increase in the cost of transportation to the shipper and ultimately of course to the consumer. From Kansas City to St. Louis the new rates will amount to an advance of from 18 to 23 per cent. over the old schedule; from Chicago to St. Paul and throughout the tributary territory the increase is from 13 to 50 per cent. according to the class of articles affected; from western cattle-shipping and packing-house points to Chicago, about 20 per cent.; from St. Paul and other points in the same general territory to New York, about 15 to 20 per cent.; and from Pennsylvania and other adjacent steel and iron producing points to St. Paul and tributary territory, from 10 to 50 per cent. according to the article affected. Numerous less important scattering rates have also been directly raised or affected in some way through changes in classification. The tariffs mentioned are, however, of great importance because they represent the additions which will be made to all through charges east or west of which the rates quoted form a part. These changes are of particular interest in another way because

[12] See Mr. Brandeis' brief for a convenient list of these states; also Freund, article cited, for exposition of this point.